UNITED STATES DISTRICT OF MASSACHUSETTS		
	- 200 5 MA	AY -1 P # 45
SPRINGFIELD TERMINAL RAILWAY COMPANY,) (),), (); (), (); (STRICT COURT RICT OF MASS.
Petitioner,)	
)	
v.)	No. 04-12705-RGS
)	
SURFACE TRANSPORTATION BOARD and)	
UNITED STATES OF AMERICA,)	
Respondents.)	
)	

ADDENDUM NO. 1 TO RESPONDENTS' BRIEF

SERVICE DATE

. INT

INTEL JATE COMMERCE COMMISSION

EX PARTE NO. 328

INVESTIGATION OF TANK CAR ALLOWANCE SYSTEM

Decided: June 14, 1979

By Notice of Proposed Bulema: g and Order served July 14, 1976, we instituted this proceeding, under 49 U. S. C. \$\$ 1822 and 10747, formarly sections 1(14) and 15(15) of the Interstate Commerce Act, to examine the milesge allowance system of compensation for privately-owned tank cars, to develop methods for its continuing smooth functioning, or to devise an alternate method of compensation to those who furnish privately-owned tank cars. The parties to this proceeding proposed that a joint committee, composed of representatives of the railroads, tank car lessing interests, and shipper interests, be formed to collect and evaluate tank car cost and utilization data and to submit proposed solutions for the issues enumerated by our Notice.

By order served September 16, 1976, we authorized formation of the joint committee and held this proceeding in abeyance. Pursuant to this order the committee submitted periodic reports indicating progress toward ultimate resolution of the issues in this proceeding. A mutually socceptable compromise solution was reached by the committee representatives, on behalf of all tank car providers and railroads who are parties to this proceeding. Railroad acceptance of the terms of the agreement for application to tank cars was made on the basis that such acceptance shall not be construed as acceptance of those terms for application to other privately owned cars. On May 1, 1979, the parties filed a joint petition seeking our adoption of their agreement which resolves all outstanding issues. Accordingly, it appears that this matter is now the service and outstanding issues.

(b) Supalization Ratio and Marine 2979 the calendar year 1978, except that invaligation for the year 1979 will be subject to the return route Item which is required to be published in Them 125 of the Mileage Allowance Tariff by paragraph (c) of this Section. (b) Equalization Ratio and Rules for 1980 and Subsequent TORES The tank car mileage equalization ratio for 1979 shall remain in effect thereafter until material changes in the conditions and practices of tank car movements indicate the meed for a new movement study. Appropriate changes in the ratio and rules may then be made to comport with its results. Notwithstanding the Toregoing, the equalization ratio and rules may be changed on the basis of the original movement study, for 1980 and subseq est years, so long as equally significant offsetting c'anges benefiting both railroads and car providers are similtaneously published. Wherever the Mileage Allowance Total is referred to it ood to sactive all

(c) Reverse Empty

Appropriate tariff language will be placed in Item

125 to provide for (1) a penalty set the same level per

mile as the equalisation excess mile penalty) for non-railroad

parties "short-routing" empty cars back to the immediately

prior loading point (such penalty mileage to be eliminated

from equalisation accounting); and (2) for an equalization

adjustment by the erring carrier to the car owner when be
cause reverse empty routing is not followed by the carriers,

excess empty mileage due to the was of different interchange

points, or carriers, is incurred.

(d) Updating Excess Empty Mileage Charge

The cents per mile equalization Excess Empty
Mileage Charge in Item 120 D(1) of the Mileage Allowance
Tariff shall be adjusted annually by the application of
a percentage factor calculated and applied as follows:

Index numbers will be established for the base year 1978 and each subsequent year by dividing the total Class I Railroad operating expenses and taxes (from the new Uniform System of Accounts) by the Class I freight train loaded and empty mileses (from the same source). The index mamber for the base year 1978 will then be divided into the current year's index number to establish the percentage factor. That percentage factor will be applied to 18 cents per car mile, and, the result will be rounded to the closest cent per mile.

the annually related formatty filters through see directions, shall be published the same time at the tank car mileage splats to making affective on or with-

(a) Exceptions Not Contemplated

The equalisation plan provided here is incented to be a nationwide plan adopted and adhered to by all U.S. Railroads. Except in unusual diremetables, it is not contemplated that any railroad should flag-out from the national plan, and railroad parties to this proceeding shall essent any present published entiplens, countertons are published entiplens.

52 -- CAR VALUE

(a) Depreciation and Salvage Value

The tank car life and salveys value previously approved by this Commission in Mil 2005, Million Alleganors, Tank Care, 357 L.C.C. 25 (1970), i.e., 30-year car Min, 10 percent palvage value, amounting?

(b) Interest Pactor

tarest shall be calculated bringference to the interest post for equipment trust cartificates on reilroad and privately queed cars as shown, for the Missi Surrent 36-months available at the time of calculation, in the annual publication by Salomon Brothers entitled "Summary of Railroad Equipment Trust Financing." The interest rate for each offering over the 36-month period under the caption "Approx. Interest Cost %" shall be multiplied by the "Amount of the Issue" and the individual results shall be added together and their sum divided by the 36-month total of all entries under "Amt. of Issue." The result of this division, rounded two decimal digits, shall be the "interest factor" applied in the determination of annually updated milesge allowances.

of principal plus interest on the depreciable portion of a car's value (80 percent) shall not decline as a car ages, but shall consist of equal amounts for each of a car's 30-years of life. This "annuity factor" will be expressed as a percent to 5 decimal digits. It will be developed from annuity tables by reference to the car's Allowance Car Value, salvage value, and to the current "interest factor" calculated under the preceding paragraph. Interest on salvage value (80 percent shall be calculated by multiplying that value by the current "interest factor."

in the Car false

The Allowance Car Yalas for mits built in the year 1968 and subsequent years shall as the original cost as empresented to the original buyer by the manufacturer's invoice, or (for samufacturer-lassors pars) that value certified, or which would have been certified, to the lesses for investment tax credit purposes.

Por cars built prior to 1968, the 1968 Base Classification Value as determined by the Association of American Ballroads (AAH) shall be the Allewance Car Value.

Appropriate amounts will be added to the value of owned or leased cars for initial-into-service transportation costs, and for capitalized original lining and capitalized additions and betterments.

(d) Tank Car Allowance Table

The Tank Car Allowance Table shall be constructed by dividing annual car cost by annual loaded tank car mileage (as determined in Section 4 below) using the following specifications:

(1) Age Groups. Tank cars shall be separated as between cars less than 30-years of age and 30-years of age and over, so that compensation for the latter may be calculated without provision for depreciation, or interest on other than salvage value.

(2) Allowance Value Brackets, Plignance Value
Disactets shall be in \$1,000 thousands, i.e.,
80 - \$1,000; \$1,001 - \$2,000, etc.; extending up
to the currently applicable Maximum Saluation
determined under (3) of this Subsection.

Bracket on which allowances are to be calculated and paid shall be set for each year by applying a factor of 1.5 to the average price paid by the railroads for new freight cars acquired in the previous year, as calculated by the AAR. In the 12 months following July 1, 1979, and July 1, 1980, however, the maximum value brackets payable shall be \$20,001 - \$21,000, and \$25,001 - \$26,000, respectively. On and after July 1, 1981, the maximum value bracket shall be that determined under the first sentence of this paragraph.

(4) <u>Mid-Point Value</u>. The mid-point of each Allowance Value Bracket shall be used to determine the applicable mileage allowance rate.

(5) Application of Allowance Table to Allowance
Car Value. The maximum allowance calculated for
the Maximum Value Bracket determined under
Section 2(d)(3) shall apply to all tank cars
with allowance car values within or above that



13 - HATETERINGS AND CONSTRUCT COST

(a) Leaser Cost to Be seed Drop Ton Bancience of Four

maintenance and operating cost (which the parties say was \$748.21 p or in 1976) will be developed for subsequent years from t experience of the Four Major Tank Car Compares 10th of Car Line, Div. of ACF Endustries, Gens. Tican "Tansportation Corporation, North American Car Company in the same manner the \$748.21 factor. They shall study and develop the cost of their leased fleets for succeeding calendar years, which post will be used as the measure of the maintenance and operating cost for Issued and for shipper-comed cars.

(b) Lessee Cost

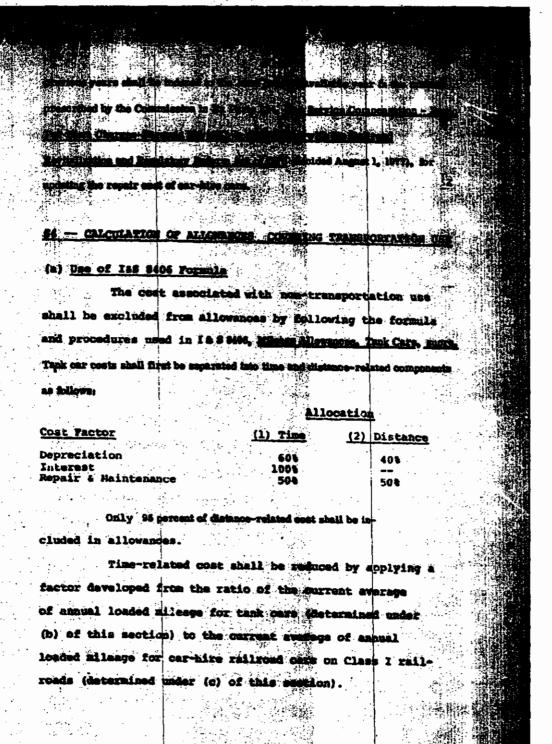
This cost (which the parties say was \$34.88 in 1976) includes programmed maintenance of values, nondiscretionary cleaning costs (when, under the terms of the lease agreement, the lease is not reinbursed) and certain personnel expenses associated with monitoring and scheduling cars for repairs and inspections. It covers the cost of leased cars borne by the lease in addition to the cost of such cars borne by the leaser.

These "lessee" costs will not be re-determined annually. The \$34.88 figure shall be factored to the current year by updating 1976 experience, using the hourly earnings index for production or non-supervisory workers on non-agriculture payrolls published by the Bureau of Labor Statistics of the United States Department of Labor in the "Minifely Labor Review" for the latest month available by July 1. This cost shall be added to the "lessor cost" developed under sub-paragraph (a) in determining maintenance and operating cost for leased and for shipper owned cars.

(c) Maintenance and Operating Cost for Puture Years

the first of the part of the part

When allowances are first calculated pursuant to this decision, maintenance and operating costs shall be taked on 1976 experience. In subsequent years, the allowance calculations shall be based upon the most current available experience in previous years. Beginning with the first annual update as provided in Section 7(a) hereof, a moving average for the three most current available years will be used. Each of the factors for





The Four Major Tank Car Companies shall conduct an annual study of mileage for the same tank car fleet which is studied for operating cost, as required by Section 3(a) above. Except as provided in (d) of this section the average loaded mileage per car shall be that developed for the fleet in each of the 3 most currently available years, totaled and divided by three.

(c) Development of Loaded Car Mileage For Car-Rire Railroad Cars on Class I Railroads

The AAR shall develop annual total loaded car miles for all of the car-hire railroad cars on Class I railroads, for each calendar year, from R1 Annual Reports--Schedule 531, line 12--as submitted to the ICC by Class I railroads, and Summarized by the AAR. The average number of cars will be the number of cars owned by Class I railroads at the beginning and at the end of the year (as reported in Columns (b) and (k) of Schedule 417) divided by two. Car miles shall be divided by that average number of cars, and the result shall be the average mileage for that calendar year. Except as provided in (d) of this section, the average loaded mileage per car shall be that developed for the fleet in each of the 3 most currently available years, totaled and divided by three.

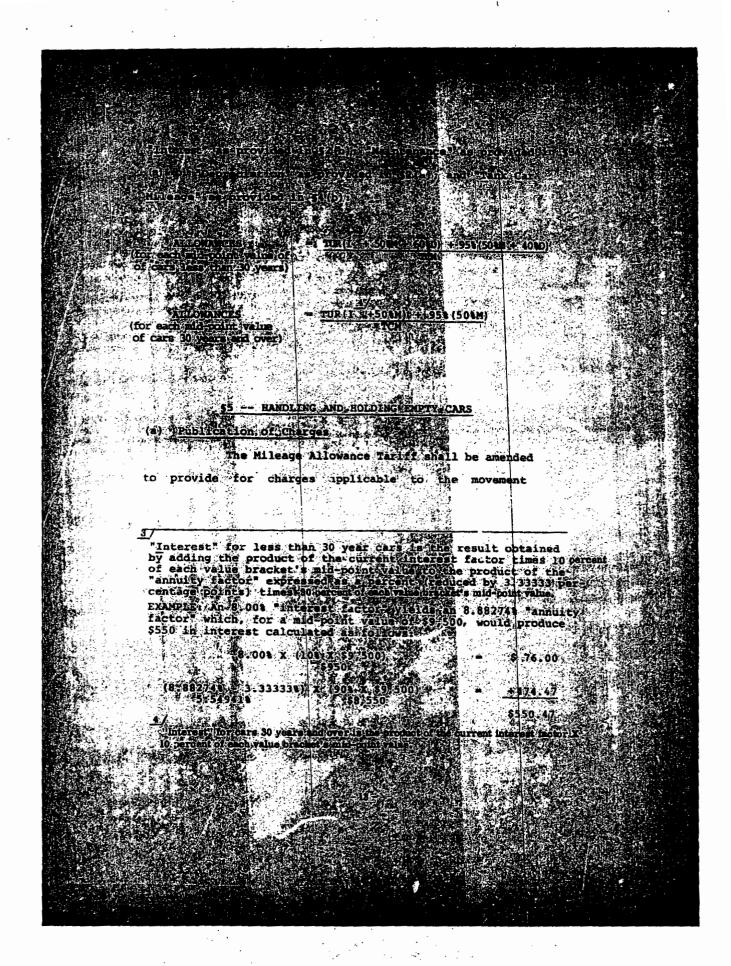
(d) Initial Use and Update

Notwithstanding the provided constitution of this section, the allowances saidleship published in compliance with this order shall be determined by reference to mileage for the year 1976, i.e., 5,775 loaded miles for tank cars and 9,294 loaded miles for all car-hire cars.

The resulting time-related transportation use factor for initially published allowances shall, therefore, he 62.144, i.e., 5,775/9,294. Buginning with and after the first annual update, as provided in Section 7(e), the moving averages developed in accordance with the provisions of (b) and (c) of this Section will be used to calculate all mileage factors used in the development of currently applicable allowances.

(e) Pormula Por Calculation

Allowances for each value bracket in the Tank
Car Allowance Table, which is to be published in accordance
with the terms of \$2(d) hereof, will be determined by
applying the following formula, where "Transportation
Use Ratio" is developed as provided in this Section;

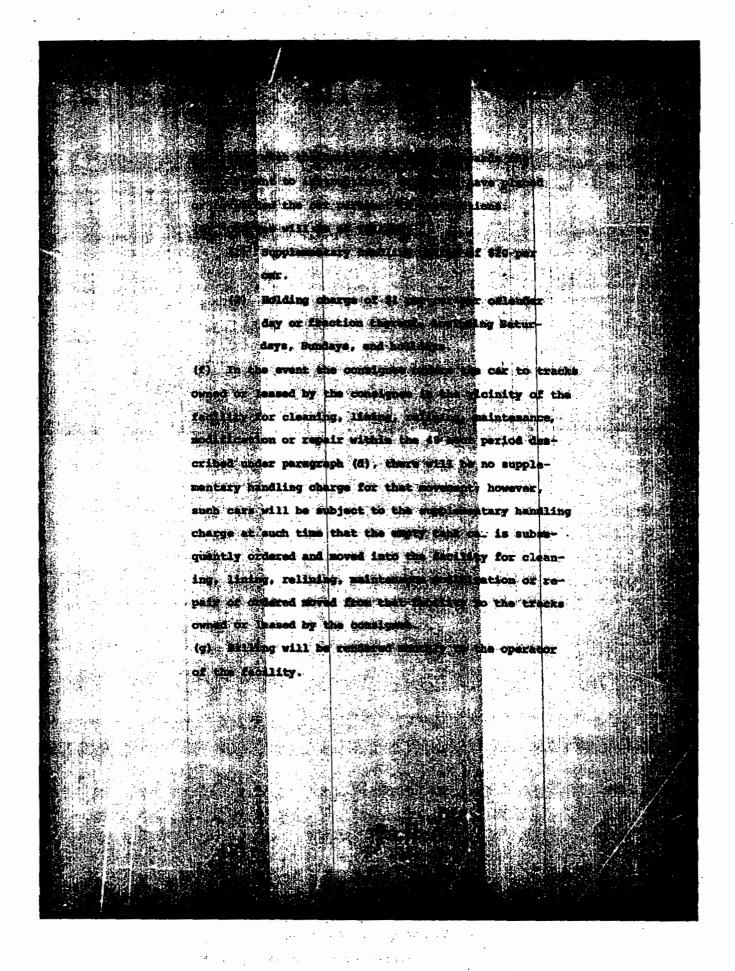


and/or the holding of empty private tank cars on tracks at or adjacent to non-railroad facilities for cleaning, lining, relining, paintenance, modification or papair where the tracks are not owned or leased by the operator of the facility. The following new items (or their substantial equivalent) shall be added to the Mileage Alloyance Tariff:

- (a) The rules and charges in this item apply only to empty private tank cars consigned to nonrailroad repair facilities, i.s., facilities for cleaning, lining, relining, maintenance, modification, or repair.
- (b) The rules and charges do not apply to: 1) Empty private tank cars moving as revenue freight under the provisions of Item 125 series, parts A & B, paragraph B(2).
 - 2) Empty private tank cars handled or held for carrier operating convenience.
 - 3) Empty private tank cars en route to facilities for cleaning, lining, relining, or repair for heavy repairs following railroad damage.
 - 4) Empty private tank cars on route to repair

facilities located on the premises of a shipping facility, provided that the empty car, after repair, is subsequently shipped from the facility in revenue freight service.

- (c) The rules and charges in this item do not in any way superseds or override existing, or new, written contractual operating, side track, track lease, property lease, etc., agreements or tariffs that contain empty private tank car handling and holding provisions as part of the overall agreement.
- (d) Charges applicable under these provisions will apply to empty private tank cars which the consignee has not ordered to his or her cleaning, lining, relining, maintenance, modification or repair facility (or the consignee owned or lessed tracks in the vicinity thereof before the expiration of 48 hours (not counting Saturdays, Sundays and holidays) after the consignee is notified that the car is ready for placement. This time calculation will start the first 7 AM subsequent to the carrier notification to the consignee that the empty private tank car is ready for placement and time



The same method and timing fax updating the excess empty milarge charge provided in Section 1. paragraph (i) of this detision shall be used to update the \$20 supplementary handling thange.

The percentage factor determined under Section

1 (d) for calendar years subsequent to 1978 shall be applied
to the \$20 base year charge and the result, rounded to the
nearest dollar, shall be published to become effective on or
within two months after July 1 of each year.

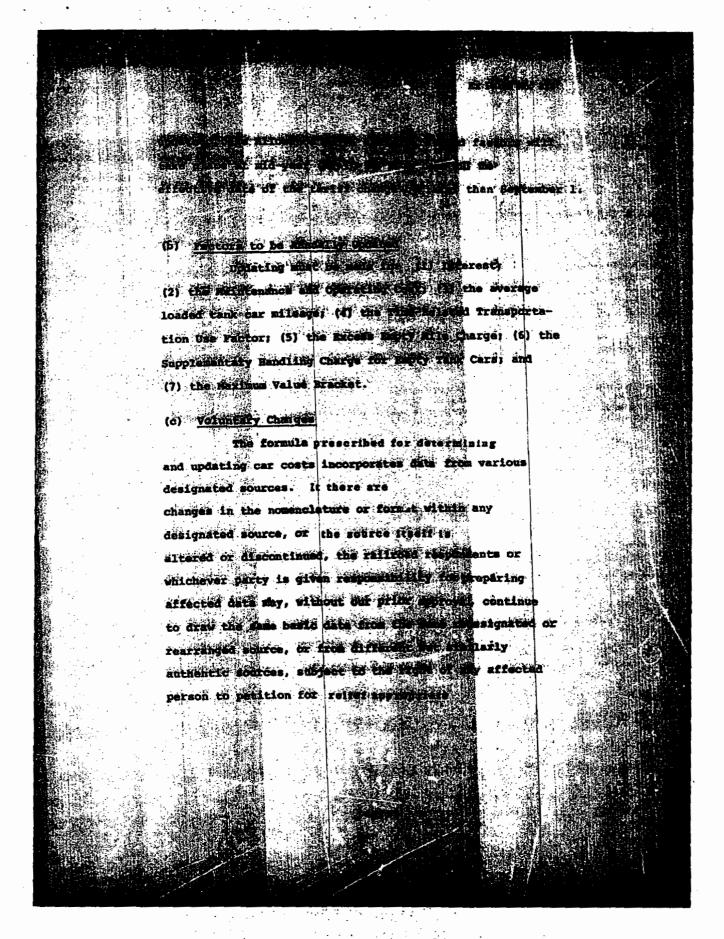
56 -- NETHOD OF CONPENSATION

The method of compensation shall remain unchanged, i.e., allowances shall be paid on actual loaded car miles.

\$7 -- PERIODIC UPDATE

(a) Nature, Method And Timing of Required Updating

The factors specified in Sections 1/(d), 2(b) & (d) (3), 3(a) & (b), 4(b) & (c), and 5 (a) shall be updated annually following the initial allowances published in compliance with this decision to become effective Jetyl, 1972, Emerical content of Paximum Value Brackets in 1980 and 1981, the annual



ge the case of any particular of the second particular or protect, to make nonprojectical changes in any taxtification of long protects.

We have reviewed the agreement set foul above and in the joint petition, as well as the underlying data submitted by the lifeties in support. Based specifies record we find that private tank car allowances determined under this agreement will be reasonable and otherwise is accordance with 49 U. S. C.

15 1122 and 10747, and that our adoption of this agreement is warranted.

We shall retain continuing jurisdiction of this matter for the purpose of securing compliance with the terms of this agreement and updating of allowances

This decision does not significantly affect the quality of the human environment and is not a major regulatory action under the Energy Policy and Conservation Act of 1975.

IT IS ORDERED.

The joint petition is granted. The Commission adopts the private tank car milesge allowance agreement as set forth in this decision.

All railroads party to this proceeding shall publish on three days'
notice, to become effective not later than July 1, 1979, and to remain in effect
until further order of this Commission, tariff items in compliant
with the terms and substance of the agreement adopted here. The railroads
shall thereafter, by joint railroad and our provides conference, review

